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In the Supreme Court of the United States

OCTOBER TERM, 1984

WAYNE CRYTS, ET AL., PETITIONERS

v.

ROBERT P. LINDSEY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

REX E. LEE
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

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Petitioners contend that the bankruptcy court's exercise of the civil contempt power in this case violated Article III of the Constitution under the principles set forth in *Northern Pipeline Construction Co.* v. *Marathon Pipe Line Co.*, 458 U.S. 50 (1982).

1. This action stems from a bankruptcy proceeding involving several grain storage facilities. In two separate bankruptcy petitions, respondent Lindsey, the trustee for the debtor grain facilities, sought authorization to sell all commodities in the debtors' facilities. Petitioners, farmers who asserted an interest in grain stored in the facilities, were named as defendants in the trustee's action. Because of the conflicting claims to the grain, and because the condition of the grain was deteriorating rapidly, the United

States Bankruptcy Court for the Eastern District of Arkansas on May 27, 1981, authorized the trustee to sell the grain, with all proceeds to be apportioned at a later time. No party appealed the order. Pet. App. A2-A3.

To prevent the sale, however, petitioners and others unlawfully took possession of one of the grain elevators and removed at least 31,000 bushels of grain (Pet. App. A3). Respondent Lindsey moved in bankruptcy court to hold petitioners in civil contempt. After several hearings, the bankruptcy court in April 1982 found petitioners in contempt of its prior order. The court imposed a $287,708 compensatory fine upon petitioners, and, to induce compliance, assessed a penalty of $1,500 per day from the date of the contempt judgment (*ibid.*).

On appeal to the United States District Court for the Eastern District of Arkansas, petitioners challenged the bankruptcy court's jurisdiction to authorize the sale of the grain. In addition, relying on *Northern Pipeline Construction Co.* v. *Marathon Pipe Line Co., supra,* they challenged the constitutionality of the bankruptcy court's exercise of the civil contempt power. In the alternative, petitioners argued that the $250 limit on fines in Bankruptcy Rule 920 restricts the general contempt power of bankruptcy judges provided in the Bankruptcy Act of 1978, 28 U.S.C. 1481.[1]

The district court accepted petitioners' contentions in part (see Pet. App. A14-A59; 24 Bankr. 930). It held that the bankruptcy court did have general jurisdiction over the

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[1]28 U.S.C. 1481 provides:

> A bankruptcy court shall have the powers of a court of equity, law, and admiralty, but may not enjoin another court or punish a criminal contempt not committed in the presence of the judge of the court or warranting a punishment of imprisonment.

grain (Pet. App. A59), but that its exercise of the contempt power violated Article III of the Constitution (Pet. App. A32-A59). Accordingly, the court held its own civil contempt hearing in February 1983, finding petitioner Wayne Cryts, among others, in contempt and imposing a $272,550 fine against Wayne Cryts alone (*id.* at A4). The trustee appealed, arguing that the bankruptcy court could lawfully exercise the civil contempt power, and the United States intervened under 28 U.S.C. 2403 to defend the constitutionality of 28 U.S.C. 1481. Petitioners cross-appealed on the ground that the bankruptcy court lacked jurisdiction to sell the grain. Pet. App. A4.

The court of appeals vacated the judgment of the district court (Pet. App. A1-A13; 732 F.2d 619). The court of appeals agreed with the lower courts that the bankruptcy court did have jurisdiction to authorize sale of the grain (Pet. App. A4-A6). On the constitutional question, however, the court of appeals concluded that there was no occasion for it to reach the merits. The court of appeals reasoned that this Court's express determination to make its decision in *Northern Pipeline* solely prospective foreclosed Article III challenges to actions taken by bankruptcy courts prior to the *Northern Pipeline* decision (Pet. App. A7-A10). Finally, the court held that 28 U.S.C. 1481 superseded the limitations of Bankruptcy Rule 920 (Pet. App. A10-A13).

2. Petitioners' claim plainly does not warrant review by this Court. The court of appeals correctly held that the reasoning in *Northern Pipeline* should not be applied to invalidate prior actions of bankruptcy courts on Article III grounds. This decision does not conflict with the ruling of any other court of appeals. Moreover, interpretation of the scope of the prospective aspect of *Northern Pipeline* is of little continuing importance. In any event, petitioners' claim is insubstantial on the merits, because there is no Article III bar to the exercise of the civil contempt power by a bankruptcy court.

a. The court of appeals correctly held that it would make little sense to invalidate the bankruptcy court's pre-*Northern Pipeline* contempt order on Article III grounds in light of the prospective nature of that decision. It is true, as petitioners argue (see Pet. 15-21), that the grant of the contempt power in 28 U.S.C. 1481 is not contained in the provision of the Act, 28 U.S.C. 1471, held unconstitutional by this Court. But the reasoning of the prospective aspect of *Northern Pipeline* is fully applicable here. The plurality explained (458 U.S. at 88):

> It is plain that Congress' broad grant of judicial power to non-Art. III bankruptcy judges presents an unprecedented question of interpretation of Art. III. It is equally plain that retroactive application would not further the operation of our holding, and would surely visit substantial injustice and hardship upon those litigants who relied upon the Act's vesting of jurisdiction in the bankruptcy courts.

Thus, the Court, for reasons of sound judicial administration, ruled that pre-*Northern Pipeline* bankruptcy proceedings before courts that were constitutionally deficient on Article III grounds should nevertheless be treated as valid; in light of that ruling, there seems little point in subjecting such proceedings to slightly different theories of constitutional attack based on Article III. The principles of *Northern Pipeline* would justify maintaining the validity of prior proceedings regardless of the precise nature of the Article III problem involved. As the court of appeals stated (Pet. App. A9), "[w]ere this reasoning not followed, pre-*Northern Pipeline* bankruptcy decisions would be subject to continuing ad hoc attacks on the various congressional grants of bankruptcy power under the Reform Act." The interest of repose that underlay the *Northern Pipeline* decision would be destroyed.

Other courts of appeals have uniformly held that litigants may not raise post-*Northern Pipeline* Article III challenges to bankruptcy court actions occurring before *Northern Pipeline* was decided. In an almost identical situation, the Second Circuit refused to entertain an Article III challenge to a bankruptcy court's exercise of contempt power prior to *Northern Pipeline*. *Martin-Trigona* v. *Shiff*, 702 F.2d 380, 383 n.8 (1983). Similarly, the District of Columbia Circuit has stated that "the *Northern Pipeline* decision does not affect bankruptcy court decisions pending on appeal before June 28, 1982, the date of the Supreme Court opinion." *Barnes* v. *Whelan*, 689 F.2d 193, 196 n.1 (D.C. Cir. 1982). See also *In re Klapp*, 706 F.2d 998, 999 n. 1 (9th Cir. 1983).[2]

b. In any event, the exercise of civil contempt power by bankruptcy courts plainly does not violate Article III. This Court has long recognized that the contempt power is among certain implied powers that must be available to our courts "from the nature of their institution." *United States* v. *Hudson*, 11 U.S. (7 Cranch) 32, 34 (1812); see also *Michaelson* v. *United States*, 266 U.S. 42, 65-66 (1924). Given that the bankruptcy court had jurisdiction here, "the power of a court to make an order carries with it the equal power to punish for a disobedience of that order." *In re Debs*, 158 U.S. 564, 594 (1895). Whether or not a tribunal is an Article III court is irrelevant to its power to punish for

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[2]The decisions relied upon by petitioners (Pet. 14) do not conflict with the decision below. *1616 Reminc Limited Partnership* v. *Atchison & Keller Co.*, 704 F.2d 1313 (4th Cir. 1983), involved a proceeding under the 1898 Bankruptcy Act and an Article III challenge to a rule promulgated thereunder that was initiated and argued prior to the *Northern Pipeline* decision. In *Coastal Steel* v. *Tilghman Wheelabrator Ltd.*, 709 F.2d 190, 199 (3d Cir. 1983), cert. denied, No. 83-409 (Oct. 31, 1983), the court explained that because the case had not yet been tried, there need be no concern over a "retroactive" application of *Northern Pipeline*. Had the court refused to apply the decision retroactively, the parties could simply have filed new motions to which *Northern Pipeline* would have applied.

civil contempt. The power has routinely been exercised by Article I courts, such as the territorial courts, the District of Columbia municipal courts, the Tax Court, and, indeed, the bankruptcy courts themselves long before the Bankruptcy Act of 1978 was passed.[3] Moreover, this Court has recognized that administrative agencies may assess an assortment of civil penalties, apparently without violating Article III. See, *e.g.*, *Atlas Roofing Co.* v. *Occupational Safety & Health Review Comm'n*, 430 U.S. 442, 446-447 (1977).[4] Therefore, even if petitioners were correct that the court of appeals should have addressed their Article III challenge to this pre-*Northern Pipeline* bankruptcy proceeding, their claim on the merits is wholly without foundation.[5]

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[3]Petitioners assert (Pet. 22-25) that the pre-existing Bankruptcy Rule 920 limits the contempt power of bankruptcy judges under the 1978 Act. By its terms, Rule 920 restricted the bankruptcy court's contempt power to a maximum $250 fine. But the court of appeals correctly held (see Pet. App. A10-A13) that Congress in 1978 intended to broaden the bankruptcy court's power in this regard when it enacted 28 U.S.C. 1481. The 1978 Act specifically declared that its provisions were to prevail over any inconsistent Bankruptcy Rules. Pub. L. No. 95-598, § 405(d), 92 Stat. 2685. Accordingly, the broad grant of contempt power should be construed as overriding any monetary limitation previously imposed by Rule 920, and no court of appeals has held to the contrary.

[4]And agencies are empowered to impose fines for failure to obey their orders. See, *e.g.*, 15 U.S.C. 45(*l*).

[5]Petitioners also contend (Pet. 25-26) that the court of appeals erred by remanding the case with instructions to the district court to review the bankruptcy court's findings under a "clearly erroneous" standard. They suggest that the "clearly erroneous" standard grants too much deference to the Article I factfinder. As petitioners themselves seem to realize (Pet. 26), this contention is manifestly premature since the standard has not yet been applied, and, depending on the outcome on remand, petitioners may have no interest in complaining about its application. Moreover, masters have long adjudicated facts under Fed.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

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R. Civ. P. 53 subject only to a "clearly erroneous" standard (see, *e.g.*, *Los Angeles Brush Corp.* v. *James*, 272 U.S. 701, 703 (1927)), and bankruptcy courts have been subject to this standard of review without challenge since well prior to the 1978 Act. See Bankr. R. 810.

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